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10/605,477	10/01/2003	Gunnar Backman	400.910PAT	2476

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EXAMINER	
EVANS, KIMBERLY L	
ART UNIT	PAPER NUMBER
4143	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/605,477	BACKMAN ET AL.	
	Examiner	Art Unit	
	Kimberly Evans	4143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 October 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *01 October 2003* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *1/9/2004*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

1. This action is in reply to the application filed on October 1, 2003.

2. Claims 1-10 are currently pending and have been examined.

Information Disclosure Statement

3. The Information Disclosure Statement filed on October 1, 2003 has been considered. An initialed copy is enclosed herewith.

Drawings

4. The drawings are objected to under 37 CFR 1.83(a). Figures 1 and 2 are missing labels and/or titles. The unlabeled rectangles, squares, and shapes should be provided with descriptive text labels. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement

sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections – 35 USC § 112 - 1st Paragraph

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Many features critical or essential to the practice of the invention, but not included in the claims is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).

7. With respect to Claim 1, the limitations describe "the storage unit" and "whether the effect is measurable as indicated by an indicator", however the specification does not describe how

the results are transformed or stored in the storage unit". In addition, neither the means nor the criteria for "measuring" the effect is described in sufficient detail to enable any persons skilled in the art to make or use it the invention, hence for the Examiner, one skilled in the art, or even an expert to figure this out would be an "undue burden".

8. With respect to Claim 5 limitation, "…source stating whether the X and Y elements…" does not provide sufficient detail essential to the practice of the invention since it does not disclose the protocol or algorithms used to determine the how the source will identify if the X and Y elements are an act or result of an act.

9. With respect to Claim 6 limitation, "concluding that a set of goals (25) is measurable when an indicator (113)…." neither the claims nor the disclosure distinctly describes the means in which goals will be measured. Claims 8-10 do not resolve the deficiencies set forth in claim 6 and are therefore rejected for the same reasons. For the Examiner, one skilled in the art, or even an expert to figure this out would be an "undue burden".

10. With respect to Claim 1, "determining whether the effect is measurable as indicated by an indicator", and "reformulating the effect", the "indicator" is not clearly defined nor is the means to "reformulate" the effect when it is not measurable is described in the specification. Claims 2-10 do not resolve these deficiencies and are therefore rejected for the same reasons.

Claim Rejections – 35 USC § 112 – 2nd Paragraph

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. With respect to Claim 1, it is unclear whether Applicant intends to claim a system or a method. The current claim language suggests that the Applicant is attempting to claim a product-by-process or product-by-system. The preamble describes a “method” while the fourth limitation refers to a “storage unit”. It should be noted that only the process will be given patentable weight and have art applied accordingly.

Claim Rejections - 35 USC § 101

13. The following is a quotation of the first paragraph of 35 U.S.C. 101:
Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

14. Claims 1-10 are rejected under U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 1 is an independent claim of an abstract idea and non-functional description material, therefore only a judicial exception, not being one of the statutory categories. The claim does not provide any physical transformation and the invention as claimed does not produce a “useful, concrete, and tangible result.” A useful, concrete and tangible result must be either specifically recited in the claim or flow inherently therefrom. To flow inherently therefrom, it must occur. If there is a reasonable exception or it is merely likely that it would occur, it does not "flow inherently therefrom" and the claim would need to be amended to specifically recite the result. The second

factor in this test for practical application is a determination of whether the claimed invention produces a concrete result. Usually, this question arises when a result cannot be assured. In other words, the process must have a result that can be substantially repeated. Note that the focus is on the result, not the steps themselves. For example, concrete data processing steps could still produce an unrepeatable result if the data being processed is subjective. However, the mere fact that the result is an estimate, prediction or other approximation that may not ultimately be found to be accurate is not a determinative factor for concreteness. Thus, an assured result refers to repeatability and ability to achieve a result rather than ultimate accuracy of the result. The present invention appears to be directed toward a number of subjective determinations of process steps, links, analysis, sources, and the perceived success of a proposition, program initiative and/or business opportunity. The result of these steps depends on the subjective opinion of certain persons of the process (i.e. management, teams, organizational units, individuals, stakeholders), and the result of these steps might be different depending upon the individual or individuals. The invention cannot be used as intended without undue experimentation, as each user's subjective analysis would alter the result. Also the supporting dependent claims, 2-10 do not remedy this flaw.

15. For an invention to be useful, it must satisfy the utility requirement of 35 U.S.C. 101. The utility requirement provides that the utility of an invention has to be specific, substantial and credible. A claim that can be read so broadly as to include statutory and nonstatutory subject matter must be amended to limit the claim to a practical application. Another consideration is whether the invention produces a concrete result. The process must have a result that can be substantially repeatable or the process must substantially produce the same result again. Since the method and system described here is contingent upon various theoretical assumptions, and subjective rationale, the results of this system and

method are unpredictable. This invention lacks enablement since it cannot operate as intended without undue experimentation.

Claim Rejections - 35 USC § 102

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:
A person shall be entitled to a patent unless –
(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

17. **Examiner's Note:** The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

18. Claims 1, 6, and 7 are rejected as being anticipated over "Julia Coffman, Harvard Family Research Project, "Learning From Logic Models: An Example of a Family/School Partnership Program, 1999, herein referred to as "Harvard".

19. With respect to Claims 1, 6 and 7, Harvard as shown discloses the following limitations:

- *articulating initiatives by using a logic map, comprising: obtaining a proposition (100) from a source (102)*; (see at least Step 1: Determine the Appropriate Scope for the Logic Model:…and "Logic Model Defined": ….a logic model provides the basic framework for an evaluation….it illustrates a program's theory of change..")
- *conducting process steps (104, 106, 108, 110);* (see at least Harvard, "Using this Brief":…"this brief offers a step-by-step approach for developing…a tool to guide evaluation processes…")
- *storing results from the process steps in a storage unit (112);* (see at least Harvard, "Step 2: Identify your Model's Components", paragraph 3:"……."Short-term outcomes:"…the direct result of your program activities. They indicate a measurable change...")
- *transforming results stored in the storage unit (112) to a logic map having a context (14) and an initiative (28), the initiative (28) comprising an input (16)linked to an effect (20)that is linked to a goal (24) identifying the context (14); identifying a perceived goal (23) that corresponds to the context (14); identifying the input (16) and the effect (20) that results in the perceived goal (23);* (see at least Harvard, Step 3:Draft the Logic Model: "….The next step is to take what you have done and put it in graphic form,…" and Step 2: Identify Your Model's Components: "..Inputs, Activities, Short-term outcomes, Long-term outcomes, contextual variables, Outputs, Impacts, Intermediate outcomes….")
- *determining whether the effect (20) is measurable, as indicated by an indicator (113), and reformulating the effect (20) when the effect is not measurable* (see at least Harvard, Step 4: Use Your Logic Model as an Evaluation Framework: "…indicators are measures used to determine if the boxes, or components in your logic model have been achieved…..and …to understand fully whether the component has or has not been achieved...")

- *Linking the activities and resources (30) to the effect (20) with a linking segment (22); and linking the effect (20) to at least one of the goals (25) with a linking segment (26).* (see at least Harvard, "Logic Model Defined…there is a power in visual representation…..FIP Model Example and Step 3: Draft the Logic Model": "…putting boxes around the components and attaching arrows to show the relationships between them…"Outputs:…these fall between activities and ….link between program activities and…")

As it relates to the use of the terminology "logic maps" versus "logic models", for purposes of this examination process, a logic model is the equivalent of a logic map in that it is a visual representation of the relationship between the various components of the program of work. Traditionally, these components include program inputs, actions, intermediate goals/objectives, and overall program outcomes. The structure of the logic map -- that is, the illustrated relationships between the components -- highlights the "logic" which one expects a project to be successful. Therefore, the logic map or logic model is a schematic representation of a project.

Claim Rejections - 35 USC § 103

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art

to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

21. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

(a) Determining the scope and contents of the prior art.

(b) Ascertaining the differences between the prior art and the claims at issue.

(c) Resolving the level of ordinary skill in the pertinent art.

(d) Considering objective evidence present in the application indicating obviousness or nonobviousness.

22. Claims 2-10 are rejected as being unpatentable over Harvard in view of W. K. Kellogg Foundation W. K. Kellogg Evaluation Handbook (1998) and Logic Model Development Guide (2001), www.wkkf.org, herein referred to as "Kellogg".

23. With respect to Claim 2,

Harvard discloses the limitations as shown in the above rejections. Harvard does not disclose the following limitations, but Kellogg however as shown discloses:

- *the proposition from the source is specified into non-ambiguous causal statements consisting of elements described as X- elements that influences Y-elements* (see at least Kellogg Logic Model Development Guide: Page 6, Chapter 1: "…describing programs in language clear and specific enough to be understood and evaluated…and page 11 "…model emphasizes the causal linkages thought to exist among program components…")

It would have been obvious to one skilled in the art at the time of the invention to combine the method of defining a logic model of Harvard with the clear causal linkages of the

program components of Kellogg because communication is a key component of a program's success and this would provide an organized approach to capturing, documenting, and disseminating program results.

24. With respect to Claim 3,

Harvard and Kellogg disclose the limitations as shown in the above rejections. Furthermore, Kellogg as shown discloses the following limitations:

- *creating non-ambiguous statements regardless of any semantics through definitions of X and Y-element indicators* (see at least page 6, Chapter 1: Describing programs in language clear and specific enough to be understood and evaluated…and related Table: "How Logic Models Better Position Programs Toward Success" , column entitled "Program Elements" and page 45, Exercise 5 and corresponding Table "Example and Use of Indicators": …indicators are the measures you select as markers of your success…")

It would have been obvious to one skilled in the art at the time of the invention to combine the indicators of Harvard with the clear and specific methods used to measure success of indicators of Kellogg because this would provide evidence that certain conditions exist or certain results have or have not been achieved.

25. With respect to Claim 4,

Harvard and Kellogg disclose the limitations as shown in the above rejections. Furthermore, Kellogg as shown, discloses the following limitations:

- *defining an indicator for X and Y elements by stating a method of measurement and at what level an element measure is fulfilled* (see at least page 29: "….providing indicators that measure progress made by your program…." and page 45, Table: Example and Use of Indicators")

It would have been obvious to one skilled in the art at the time of the invention to combine the process steps of Harvard with the methods of measurement of Kellogg because these methods would allow decision makers to assess progress towards the achievement of intended outputs, outcomes, goals, and objectives.

26. With respect to Claim 5,

Harvard and Kellogg disclose the limitations as shown in the above rejections. Furthermore, Kellogg as shown discloses the following limitations:

- *source stating whether the X and Y elements are an act or a result of an act that produces a change of a state.*(see at least page 16: Demonstrating Progress Toward Change: "…conducting an activity is not the same as achieving results from the accomplishment of that activity…" and "…those data are outputs (activity data), not outcomes….")

It would have been obvious to one skilled in the art at the time of the invention to combine the process steps of Harvard with the method of achieving results of Kellogg because it would provide a better assessment of outcomes as it relates to what (elements) work and why.

27. With respect to Claims 8 and 9,

Harvard and Kellogg disclose the limitations as shown in the above rejections. Furthermore, Kellogg as shown, discloses the following limitations

- *the X or Y elements (113) that are stated as an act (119) becoming an input (16).*
- *the X or Y (113) that are stated as a result of an act that produces a change of a state (119) becoming an effect (20) or goal (24).*

(See at least Kellogg, page 7: "…reading a logic model means following the chain of reasoning or "if…then…" statements which connect the program's parts.)

It would have been obvious to one skilled in the art at the time of the invention to combine the indicators of Harvard with the method of achieving results, specifically "if…then…statements" of Kellogg because it would provide a more effective means to measure, assess as it relates to what (elements) worked and why (or why not) and modify program assumptions to achieve the desired goal/outcome.

28. With respect to Claim 10,

Harvard and Kellogg disclose the limitations as shown in the above rejections. Furthermore, Kellogg as shown, discloses the following limitations

- *context description (115) becoming a context (14)*. (see at least Kellogg, page 36 and related Figure: What Parts of Your Program Will be Evaluated? "…Context relationships and capacity and corresponding description: context is how the program functions within the economic….")

It would have been obvious to one skilled in the art at the time of the invention to combine the process steps of Harvard with the evaluation criteria of Kellogg because this would effectively explain some of the strengths and weakness of the program as provide a better understanding of how unanticipated and external influences impact a program's implementation and/or the achievement of their outcomes.

Conclusion

29. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- University of Wisconsin-Extension Program Development & Evaluation Logic Model Workshop Guide, 2001. Reference provides an overview and summary of program logic models. It provides the framework as to how to create, and use logic models.

- Journal of Extension, June 2001 Volume 39 Number 3: How to Design Better Programs: A Staff-Centered Stakeholder Approach to Program Logic Modeling", George W. Mayeske, Michael T. Lambur. Reference describes the steps in which program logic models can be used to illustrate how a program plan will be implemented.

- Jan B. Carroll, Judy McKenna, Theory to practice: Using the logic model to organize and report research results in a collaborative project, Journal of Family and Consumer Sciences Alexandria: 2001, Vol. 93 Iss 4, pg 63-66. Reference describes logic model elements and how it is a useful tool in guiding individuals when designing, managing, and reporting a research project.

30. Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **Kimberly L. Evans** whose telephone number is **571.270.3929.** The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the

examiner by telephone are unsuccessful, the Examiner's supervisor, **James A. Reagan** can be reached at **571.272.6710**.

31. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://portal.uspto.gov/external/portal/pair <http://pair-direct.uspto.gov >. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free). Any response to this action should be mailed to: **Commissioner of Patents and Trademarks Washington, D.C. 20231**or faxed to **571-273-8300**. Hand delivered responses should be brought to the **United States Patent and Trademark Office Customer Service Window**: Randolph Building 401 Dulany Street, Alexandria, VA 22314.

/Kimberly Evans/Examiner, Art Unit 4143

January 30, 2008

/James A. Reagan/Supervisory Patent Examiner, Art Unit 4143